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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/608,167

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Casimir R. Kiczek

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01/30/2007

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EXAMINER

LOWE, MICHAEL S

ART UNIT

PAPER NUMBER

3652

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

01/30/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No. 10/608,167	Applicant(s) KICZEK ET AL.	
	Examiner M. Scott Lowe	Art Unit 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 January 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8, 10-14 and 16-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-14 and 16-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 June 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### ***Drawings***

The drawing substitute sheet was received on 1/5/07. These drawing corrections are partially acceptable but the hook embodiment is shown in figure 10 but still is not shown as engaging the rim as claimed in claim 20.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the hook engaging the rim must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8,10-14,17-19,21 are rejected under 35 U.S.C. 102(b) as being anticipated by Hoagland (US 4,492,506).

Re claims 1,11,21 Hoagland teaches a latch assembly adapted for use with a vehicle 12,14 including a tire 12 with a rim 14 with at least one aperture (see figures), the latch assembly comprising, in combination:

a tire carrier having a first flexible member 88 having one end attached to a winch 28 and another end detachably attached to the tire 12;

a second flexible member 20 having one end of the second flexible member 20 directly connected to the vehicle and another end of the second flexible member 20 for connecting to the tire 12;

a locking member 30,32 attached to the second flexible member 20, the locking member for being disposed in the aperture of the tire to detachably connect to the rim 14, the locking member is one of a clamp member 32 and a hook member 30, the locking member and the second flexible member preventing the tire from detaching from the vehicle when the winch fails.

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Re claims 2-8,10, Hoagland teaches a locking member with a hook member 32. The details of the clamp member are not required to meet these limitations when a hook member is present.

Re claim 12, Hoagland teaches the second aperture (not numbered) being arcuate and multi-sided and the locking member 32 detachably engaging the rim at the second aperture.

Re claims 13,17, Hoagland teaches the locking member having a clamp member 32 with a latching & eyebolt member 120,122.

Re claim 14, Hoagland teaches the clamp member having a latching member 120,122 and support plate 32.

Re claim 18, Hoagland teaches a hook member 30 for engaging the rim and for disposition in at least one aperture of the rim 14 to detachably secure the tire 12 to the vehicle.

Re claim 19, teaches all materials (especially metals) will make an audible signal when struck (clamped) together to some degree, Hoagland teaches clamping a tire rim between a support plate 32 and latching member 120, 122.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16,20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoagland (US 4,492,506) in view of Marchiori (US 4,969,342).

Re claims 16,20, Hoagland is silent regarding the locking member being engage with the rim through a non-central aperture of the rim. Marchiori teaches placing a locking member 10 in a non-central aperture of the rim to protect from theft. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Hoagland by the general teaching of Marchiori to have the locking member being engage with the rim through a non-central aperture of the rim to protect from theft and for convenience.

### ***Conclusion***

Applicant's arguments filed 1/5/07 have been fully considered but they are not persuasive.

Applicant mentioned "the Princell reference" in his arguments. It is assumed applicant meant "the Hoagland reference."

As shown in the above rejections, Hoagland does teach a second flexible member 20 attached at one end directly to a vehicle and at another end to a locking member 30,32 as claimed. It is also noted that applicant's drawings show at least one intermediate structure 21 between the flexible member 25 and the vehicle and also an intermediate bracket (not numbered) flexible member 25 and the vehicle.

Applicant argued that in some instances member 20 is rigid. However, in some instances applicant's flexible members would be rigid as well. Member 20 is flexible in construction and meets the currently worded claim limitations.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the unknown flexibility limitations hinted at in applicant's arguments) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant argued that the Marchiori could not combined with Hoagland because Marchiori has an anti-theft device. However, as mentioned in the rejection only the general teaching of the locking member engaging a non-central aperture of the rim is used. Also, as stated by Marchiori, the valve stem stays with tire when authorized removal is done. Thus the tire would not need to be deflated when used as a spare and thus Marchiori provides an anti-theft device teaching that could improve Hoagland.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Scott Lowe whose telephone number is (571) 272-6929. The examiner can normally be reached on 6:30am-4:30pm M-W; Th work offsite.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Mackey can be reached on (571)272-6916. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

msl

  
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